IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION No: 14581 of 2004

Between:

Ramavath Bali Bai W/o. Balu Naik
Kasikunta Thanda, Yerragondapalem Mandal,
Prakasham District.

..... PETITIONER

AND

1 The District Collector, Prakasham District, at Ongole.
2 The Revenue Divisional Officer, Markapuram, Prakasham District.
3 The Mandal Revenue Officer, Yerragondapalem Mandal,
Prakasham District.
4 Ramavath Murthi Bai W/o. Laxma Naik
Kasikunta, Yerragondapalem Mandal, Prakasam District
(R4 is impleaded as per court order dt. 16-9-2004 in WPMP 21586 of 2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Pass an order or direction or writ under Article 226 of the Constitution of India, more particularly one in the nature of writ of Mandamus declaring the action of the second respondent in issuing proceedings in Rc.H/1361/2004 dt. 24.7.2004 as bad, illegal, arbitrary, unjust and against the principles of natural Justice.

Counsel for the Petitioner: MR.C.DAMODHAR REDDY

Counsel for the Respondents 1 to 3: GP FOR CIVIL SUPPLIES

Counsel for the Respondent NO.4: K.Aruna, Advocate.

The Court at the admission stage made the following:

ORDER:

The petitioner is a Fair Price Shop Dealer. Her authorization was suspended by the 2nd respondent through order, dated 24.07.2004, on the allegation that she has resorted to certain irregularities in the matter of distribution of essential commodities. The petitioner challenged the same on several grounds.

Sri C.Damodar Reddy, learned counsel for the petitioner, submits that the impugned order cannot be sustained for the reason that the suspension was ordered as a measure of substantive penalty and the same could not have been inflicted without conducting enquiry. It is alleged that the impugned order is in the form of a final order of suspension without contemplating any enquiry and that the same is violative of principles of natural justice as well as the relevant provisions of A.P.State Public Distribution System Control Order, 2001 (for short 'the Control Order').

While issuing notice before admission on 19.08.2004, this Court granted interim suspension of the order. The temporary dealer, who was appointed in the place of the petitioner, filed an application to implead herself in this writ petition. Through order, dated 16.09.2004, she was impleaded as respondent No.4.

Learned Government Pleader for Civil Supplies submits that the truth or otherwise of the allegations made against the petitioner can be gone into in the enquiry that may be conducted by the 2nd respondent and it is always open for him to order suspension of a dealership, pending enquiry. It is further stated that the petitioner had an alternative remedy by way of appeal to the Joint Collector and that the writ petition is not maintainable.

The petitioner was appointed as Fair Price Shop Dealer by the 2nd respondent through order, dated 02.05.1998. The dealership was suspended vide order dated 24.07.2004. The basis for the same is said to be a report, dated 15.07.2004, filed by the Mandal Revenue Officer. Basically whenever the dealership is suspended by the Revenue Divisional Officer, the affected party has to avail the remedy of appeal under Clause (20) of the Control Order. However, where such an order is passed in violation of principles of natural justice, the dealer need not be required to undergo the ordeal of appeal. Clause 5(4) of the Control Order empowers the appointing authority to suspend or cancel an authorization. Before such step is taken, a show-cause notice is required to be issued and an enquiry is to be conducted. Where, however, suspension is ordered as a measure pending enquiry, issuance of notice

before passing such orders is not necessary.

In the instant case, the impugned order does not disclose that the authorization of the petitioner is suspended as a measure pending enquiry. In fact, the order does not disclose that any enquiry is contemplated. Therefore, it has to be presumed that the suspension was ordered as a substantive penalty. Under clause 5(4), such a measure has to be preceded by a show-cause notice and enquiry. Since it was not done, the order is violative of principles of natural justice.

In that view of the matter, the impugned order is set aside and consequently the petitioner shall be continued as Fair Price Shop Dealer. It shall be open to the 2nd respondent to issue notice to the petitioner and pass appropriate orders, in case he records a finding to the effect that the petitioner has resorted to any irregularities. This exercise shall be completed within a period of six weeks from the date of receipt of this order.

The writ petition is accordingly disposed of. There shall be no order as to costs.

20.12.2004

Jsu

To

1 The District Collector, Prakasham District, at Ongole.
2 The Revenue Divisional Officer, Markapuram, Prakasham District.
3 The Mandal Revenue Officer, Yerragondapalem Mandal,
Prakasham District.
4 2 CCs to the G.P. for Civil Supplies, High Court of A.P., Hyderabad (OUT).

5 2 CD copies.